

ORIGINAL

Decision No. 24710.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA PACKING CORPORATION,
a corporation,
Complainant,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY,
a corporation, and
SOUTHERN PACIFIC COMPANY,
a corporation,

Defendants.

Case No. 3222.

BY THE COMMISSION:

O P I N I O N

By complaint filed March 17, 1932, complainant alleges that the charges assessed and collected on 15 carload shipments of dried fruit transported from Batto to Elmhurst during the two-year period immediately preceding the filing of the complaint were unjust and unreasonable in violation of Section 13 of the Public Utilities Act.

Reparation only is sought. Rates are stated in cents per 100 pounds.

Batto is on the Northwestern Pacific Railroad 41 miles north of San Francisco. Elmhurst is a substation of Oakland. Charges were assessed and collected on complainant's shipments on basis of a rate of 10½ cents. This rate is contained in Pacific Freight Tariff Bureau Tariffs Nos. 16-L and 16-M, C.R. C. Nos. 452 and 477 of F. W. Gomph, Agent, and applies from Verano, a point three miles beyond Batto. Complainant contends

that the 10 $\frac{1}{2}$ -cent rate was unreasonable to the extent it exceeded 7 cents, which is the volume of a rate then in effect from Vineburg and subsequently established from Batto to Elmhurst. Vineburg is located .5 of a mile south of Batto.

Defendants admit that the assailed rate was unjust and unreasonable and have signified their willingness to make a reparation adjustment, therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the rate assessed and collected on complainant's shipments was unjust and unreasonable to the extent it exceeded 7 cents. We further find that complainant made the shipments as described, paid and bore the charges thereon and is entitled to reparation without interest. Complainant specifically waived the payment of interest.

The exact amount of reparation due is not of record. Complainant will submit to defendants for verification a statement of the shipments made and upon the payment of the reparation defendants will notify the Commission the amount thereof. Should it not be possible to reach an agreement as to the reparation award the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that defendants Northwestern

Pacific Railroad Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund without interest to complainant California Packing Corporation all charges collected in excess of 7 cents per 100 pounds for the transportation from Batto to Elmhurst of the shipments of dried fruit involved in this proceeding.

Dated at San Francisco, California, this 25th
day of April, 1932.

C. L. Sawyer
Leon Whitell
M. A. Case
M. B. Harris
Fred G. Stewart
Commissioners.